



# Treaty Obligations & Trust Responsibility

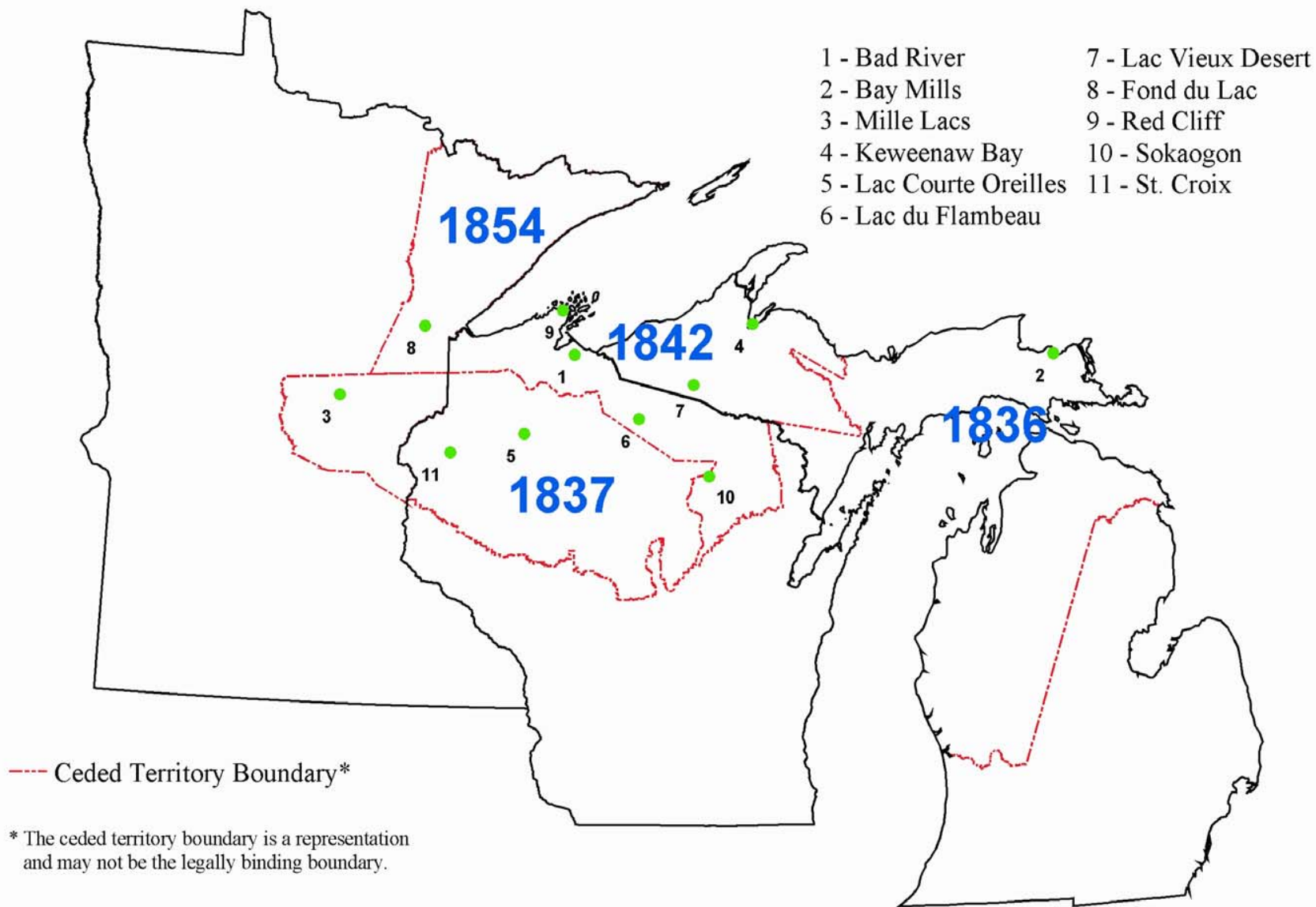
## Fulfilling the Promises

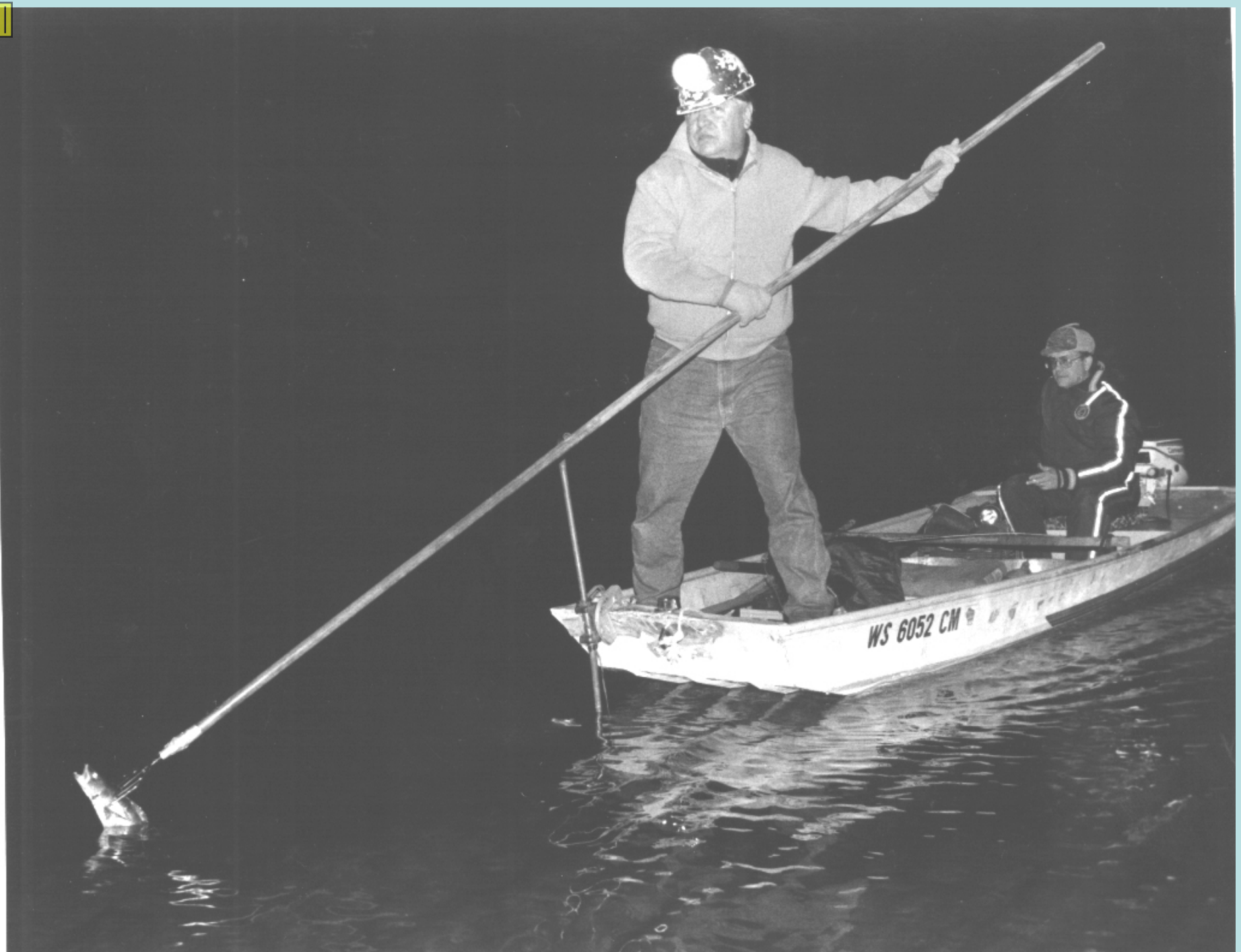
**James E. Zorn**

Executive Administrator

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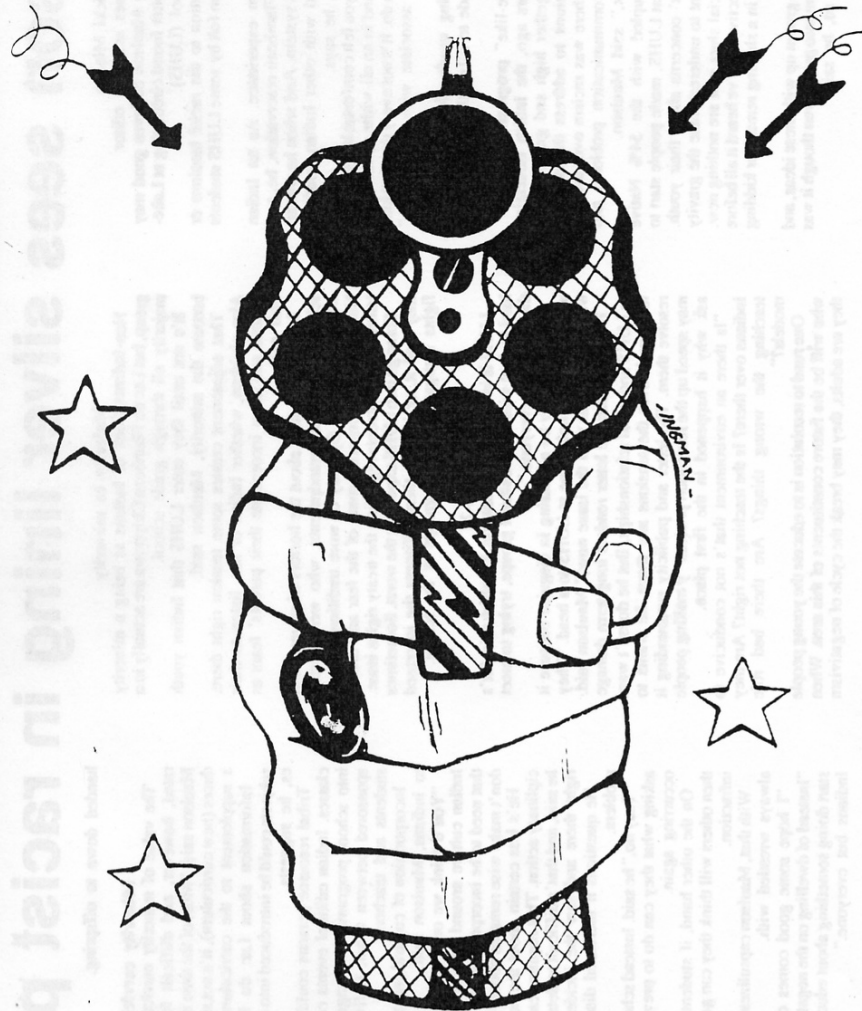
November 29, 2007







# SPEAR...



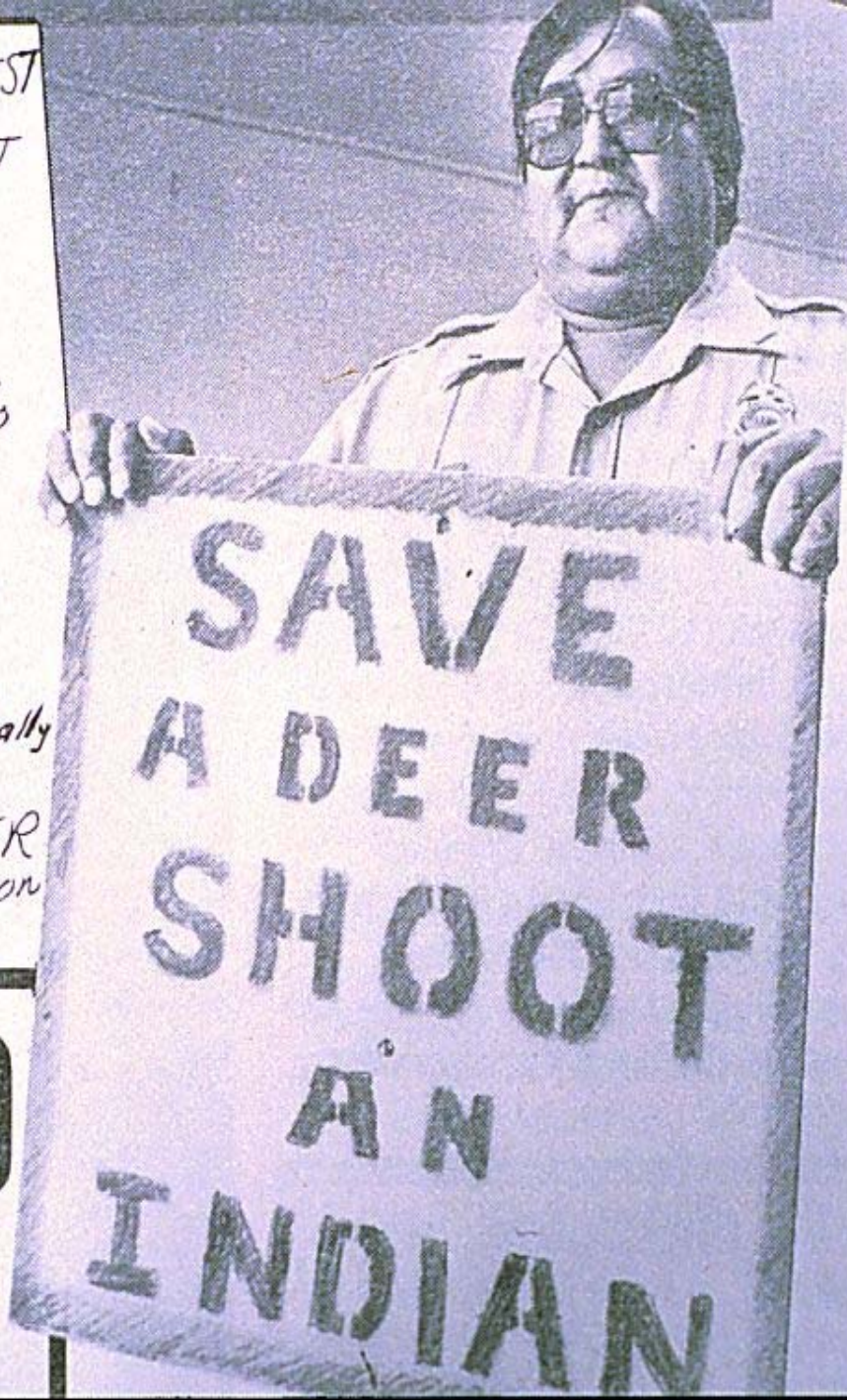
# ...THIS !!!



IS RALLY IS TO PROTEST  
ST THE TREATY THAT  
WS LOADED GUNS IN  
EARLY OPENING, AND  
SHOOTING OUT OF CARS,  
MUCH MORE.

have many bear hunters and bird  
out in the woods dressed in  
age. With this ~~new~~ treaty, it is  
that they could be accidentally  
y being mistaken for a deer.  
ON'T HAVE TO BE A HUNTER  
BE THERE. WE NEED EVERYONE

FE WASTELAND  
CAN DO IT.



# GLIFWC's Role

## Intertribal Ceded Territory Natural Resources Agency

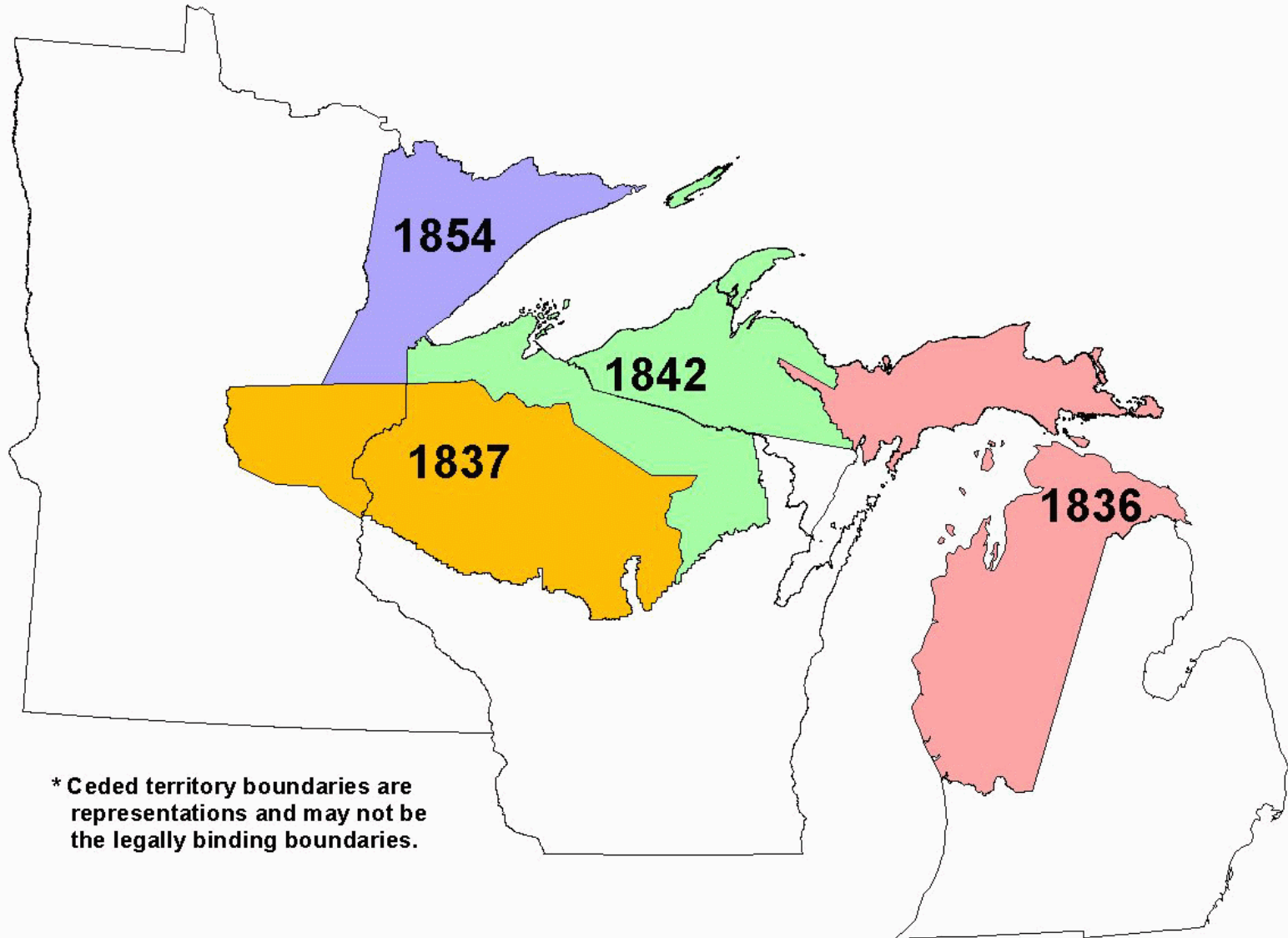
- Structured to Facilitate Intertribal Consensus Regarding the Tribes' Ceded Territory Rights
- Expertise and Delegated Authority in:
  - Biology, Resource Management, and Harvest Management
  - Conservation Law Enforcement/Public Safety
  - Development of Agreements, Tribal Ordinances and Other Similar Documents for Affirming and Implementing the Rights
  - Public Information Services



# Fulfilling Treaty Promises

- Land Cession Treaties – 1836, 1837, 1842 and 1854.
- Primary Purpose – Permanent right for signatory Tribes to continue to make a moderate living from the ceded territory lands and waters by engaging in hunting, fishing, and gathering.
- Supreme Law of the Land





**\* Ceded territory boundaries are representations and may not be the legally binding boundaries.**

# Treaty Reserved Rights

## Treaty with the Chippewa 1837

Article 5: The privilege of hunting, fishing, and gathering the wild rice, upon the lands, the rivers and the lakes included in the territory ceded, is guarantied to the Indians, during the pleasure of the President of the United States.

# Preserving the Circle of the Seasons

- *Aki* and the Circle of the Seasons
- A Way of Life – Subsistence, Economic, Cultural, Spiritual, and Medicinal Needs
- Interrelationship With and Dependence Upon *Aki* and the Other Orders of Creation



# Ojibwe Culture

- **Interdependence** between a people and the natural environment
- Notion of **Geographic Place** that embodies:
  - Human Origin
  - Historical Identity
  - Conception of Cultural Reality in the Modern World

# Interdependence with the Natural Landscape

- Virtually all plants and animals are used to meet a variety of everyday needs:
  - Subsistence
  - Economic
  - Cultural
  - Medicinal
  - Spiritual/Religious

# Ecological Damage/Cultural Damage

- Disruption of natural and social environments = disruption of Ojibwe culture
- Ojibwe stake/interests can be qualitatively different than those of other citizens
- Historic Ojibwe adaptability and resiliency  
vs.
- How much ecological disruption is too much for Ojibwe culture to endure



# Sustaining Tribes

- Continuing Recognition/Affirmation of Tribes as Governments and Communities
- Support of Tribal Authority, Responsibility & Stewardship

# Coordinating Sovereignty

- Developing Mutual Goals and Desired Outcomes
- Coordinated Exercise of Respective Sovereign Prerogatives

# Exercising Federal Authority

- Honor Treaty Obligations
- Meet Trust Responsibilities –  
Substantively and Procedurally
- Exercise Federal Authority in a way  
Compatible with and Supportive of Tribal  
Rights, Needs and Communities



# Dual Mandate Dilemma

- Implementing the agency's specific enabling laws and mandates from Congress

while

- Honoring treaty obligations and trust responsibility

# Dual Mandate Balancing Act

- Must attempt to reconcile both obligations
- Judged by “most exacting fiduciary standards”
- Can’t take the “easy way out” by simply subordinating tribal interests to “public” interests

# Nature of Trust Obligations

## Acting for the Benefit of Tribes/Indians

- Limitation on Actions
- Proaction
- Most Beneficial vs. Least Harmful
  - “What is acceptable/allowable harm”  
vs.  
• “What must/should be done to protect”

# Process/Procedure of Trust

## Good Faith and Fair Dealings

- Government-to-Government relationship and consultation process
- Opportunity to understand to the fullest extent:
  - Nature of tribal rights/interests involved
  - Impacts of proposed action/alternatives on those rights/interests
  - Tribal view of what should be done

# Process/Procedure of Trust

- Avoid premature determinations and “substitution of judgment”
- Agency remains the ultimate decision maker within bounds of its authority
- Not “Tribes Always Win”

# Mandatory/Discretionary Decisions

## Understanding Difference Between

- What Shall or Shall Not Be Done – Legally required action or inaction
- What May or May Not Be Done
  - Discretionary decision within agency authority made on policy basis
  - “Just because you don’t have to, doesn’t mean that you shouldn’t”





# GREAT LAKES INDIAN FISH AND WILDLIFE COMMISSION

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